

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 28, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1688

Cir. Ct. No. 2009SC39991

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF ATTORNEY FEES IN:

TAHNISHA LAMB,

RESPONDENT,

V.

NEW HORIZON CENTER, INC.,

APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JANE V. CARROLL, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. New Horizon Center, Inc., appeals an order awarding Tahnisha Lamb attorney's fees and costs as the prevailing party in this

action under the Fair Labor Standards Act and WIS. STAT. ch. 109 (2011-12).¹ New Horizon Center argues that the circuit court misused its discretion in awarding Lamb attorney's fees because: (1) the circuit court did not adequately explain its decision; (2) the number of hours the attorneys worked on the case was unreasonable; (3) Lamb's award for unpaid wages is minimal compared to the award for attorney's fees; and (4) Lamb rejected a reasonable settlement offer. We affirm.

¶2 This is the third time this case has been before us. Lamb filed suit against New Horizon Center, alleging that it had wrongfully refused to pay her. Lamb prevailed after extensive litigation and was awarded \$417 in unpaid wages.² In our opinion deciding the second appeal, we remanded to the circuit court with directions to more adequately explain its ruling awarding attorney's fees. On remand, the circuit court issued an eight-page written decision awarding Lamb \$49,096 in attorney's fees and \$1621 in costs.

¶3 New Horizon Center first argues that the circuit court misused its discretion because it did not adequately explain its decision. The starting point for determining attorney's fees “‘is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.’” *Crawford Cnty. v. Masel*, 2000 WI App 172, ¶7, 238 Wis. 2d 380, 617 N.W.2d 188 (citation omitted). A reasonable hourly rate is the prevailing market rate for an attorney with a similar level of skill and experience providing similar services in the same community.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The award of past due wages is not before us because New Horizon Center did not timely appeal that award.

Id., ¶8. In determining whether a rate is reasonable, the factors set forth in Supreme Court Rule 20:1.5(a) provide guidance. See *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2004 WI 112, ¶¶24-25, 275 Wis. 2d 1, 683 N.W.2d 58. They include the likelihood that the lawyer was precluded from accepting other employment by taking the job, the fees customarily charged for similar legal services in the same locality, and the ability, reputation, and experience of the lawyer. *Id.*, ¶25.

¶4 We review a decision awarding attorney’s fees and costs for a misuse of discretion. *Id.*, ¶22. “When we review a discretionary decision, we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *Crawford Cnty.*, 238 Wis. 2d 380, ¶5. We will “not substitute our judgment for the judgment of the circuit court.” See *Kolupar*, 275 Wis. 2d 1, ¶22. “We give deference to the circuit court’s decision because the circuit court is familiar with local billing norms and will likely have witnessed first-hand the quality of the service rendered by counsel.” See *id.*

¶5 We reject New Horizon Center’s argument that the circuit court did not adequately explain its decision. The circuit court’s written decision is thorough and detailed. The circuit court considered and discussed the appropriate legal standards, including the factors listed in Supreme Court Rule 20:1.5(a) for determining whether attorney’s fees are reasonable. The circuit court then applied the law to the facts and circumstances of this case, and reached a result a reasonable judge could reach. The circuit court explained:

Although the dollar amount of unpaid wages was small, the issues raised in the case were complex, and the

litigation was extensive. Employment litigation requires specialized knowledge. This case involved a claim under the [Fair Labor Standards Act, a federal law,] as well as Wisconsin Law. It involved a variety of unique and complex defenses raised by [New Horizon Center]....

The skill of the plaintiff's attorney in this case was evident throughout the proceedings. He was prepared and familiar with the issues raised at the hearing. The briefs were insightful and helpful to the court.

The issues involved were not legally novel or difficult, but are within an area of law that requires specialized knowledge.

The vast majority of legal services billed were for Attorney Reinstein at the rate of \$275.00 per hour. Attorney Reinstein submitted an affidavit which indicates that this hourly fee is the same rate at which other Cross Law Firm's clients are billed for services, and that rates at which the Cross Firm bills are similar to other employee side employment firms. The defense submitted no information or argument to the contrary. The billing rates are customary within the legal community. Attorney Reinstein further detailed extensive experience in the field of labor law, with clients charged a similar rate. The rate is reasonable.

This excerpt from the circuit court's decision illustrates that the circuit court used a demonstrated rational process to reach a reasonable conclusion. We reject the argument that the circuit court did not adequately explain its decision.

¶6 New Horizon Center next contends that the attorney's fees award is unreasonable because the number of hours Lamb's attorneys worked on the case is inflated. After reviewing the detailed billing statement provided by Lamb's attorneys, the circuit court concluded that the 216 hours spent by the attorneys and 16.7 hours spent by the paralegals in preparation of the case were reasonable, explaining "that the litigation involved investigation, negotiation, filing of the lawsuit, an evidentiary hearing before the court commissioner, a summary judgment hearing, an appeal, a trial to the court, and a second appeal—in addition

to dozens of other court appearances.” New Horizon Center raised multiple defenses, including arguing that Lamb’s claim was not governed by the Fair Labor Standards Act, arguing that Lamb was not an employee under the Fair Labor Standards Act, arguing that the circuit court had no subject matter jurisdiction and arguing that Lamb’s recovery was barred by equitable estoppel. Given the plethora of defenses and the lengthy procedural history of this case, the circuit court properly exercised its discretion in concluding that the number of hours Lamb’s attorneys worked was reasonable.

¶7 New Horizon Center next argues that the attorney’s fees award is unreasonable because Lamb’s award for unpaid wages was minimal compared to the amount of attorney’s fees awarded. The award is not unreasonable simply because it is disproportionate to the amount of wages actually recovered by Lamb. New Horizon Center did not pay Lamb wages she was owed and, unfortunately, her attorneys had to go to great lengths to recover them. The size of the attorney’s fees award as compared to the amount of wages Lamb recovered might suggest that the wiser course would have been to settle this case long ago, but it does not make the award unreasonable.

¶8 Finally, New Horizon Center argues that the circuit court should not have awarded any attorney’s fees to Lamb because she rejected two reasonable offers to settle. New Horizon Center first offered to settle for \$413 in June 2009. We agree with the circuit court that Lamb acted reasonably in rejecting that offer, which was for less than the actual wages she was owed and included no attorney’s fees, because by that time Lamb’s attorneys had spent significant time investigating her claim and drafting a demand letter. Lamb was entitled to attorney’s fees for their work under both Wisconsin and federal law. New Horizon Center also argues that Lamb acted unreasonably in rejecting a second

settlement offer it made in October 2009 of \$1200. We agree with the circuit court that Lamb did not act unreasonably in refusing to settle for \$1200 in October 2009 because she had already incurred attorney's fees that far exceeded that amount.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b).